

Virginia Regulatory Town Hall Agency Background Document Proposed Regulation

Agency Name: Department of Social Services
VAC Number: 22 VAC 40-190-10 et seq.
Regulation Title: Criminal Record Checks for Child Welfare Agencies
Action Title: Proposed
Date:

Summary:

The regulation establishes background clearances for criminal convictions and founded complaints of child abuse and neglect for child welfare agencies. It prohibits the licensing, approval, registration, and exemption of facilities when designated persons associated with the facility have certain criminal convictions or have ever been the subject of a founded complaint of child abuse or neglect. Facilities are prohibited from using a person for certain roles if the person has certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect.

Licensed child day centers and licensed child day center systems are not included in this regulation.

The Regulation for Criminal Record Checks for Child Welfare Agencies, 22 VAC 40-190-10 et seq. is being repealed. The revisions required to amend 22 VAC 40-190-10 et seq. were so extensive that it is more efficient to repeal the existing regulation and promulgate a new regulation. The proposed new regulation incorporates significant *Code of Virginia* changes mandated by the 1998 General Assembly amendments, organizational changes requested during public comment, content changes requested during public comment, and clarifications.

Basis:

The State Board of Social Services has the statutory authority to promulgate this regulation based on *Code of Virginia* sections 63.1-25. The State Board is authorized to regulate the following §§ 63.1-198; 63.1-198.1; 63.1-198.2; 63.1-198.3; 63.1-198.4 and 63.1-199 of the *Code of Virginia*. These *Code* sections establish background clearances for criminal convictions and founded complaints of child abuse or neglect and set prohibitions if a person is found to have certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect.

Section 63.1-198 applies to applicants for licensure and registration. Section 63.1-199 applies to denying or approving applicants. Section 63.1-198.1 applies to employees and volunteers of child welfare agencies. It also applies to caretakers approved by family day care, all adults living in the family day home, and those individuals approved by child-placing agencies as foster or adoptive parents. Section 63.1-198.2 applies to persons employed by, volunteering for, or who are officially involved in the day-to-day operations of a religious exempt center. Section 63.1-198.3 applies to persons who reside in a family day home.

Section 63.1-198.4 establishes a waiver for any person who seeks to operate, volunteer or work at a child welfare agency who is disqualified because of a conviction in his criminal record review. The waiver can not be granted for certain barrier crimes.

Purpose:

The *Code of Virginia* mandates background clearances for criminal convictions and founded complaints of child abuse or neglect for child welfare agencies. The *Code* prohibits operating, volunteering, or working at a child welfare agency for persons who have certain convictions or a founded complaint of abuse or neglect. This is to protect children who are in the care of child welfare agencies. Persons with convictions involving crimes against minors, violence and sex offenses, or with a founded complaint of child abuse or neglect may endanger and harm children.

The agency has decided to promulgate a new regulation titled Minimum Standards for Background Clearances for Child Welfare Agencies, 22 VAC 40-191-10 et seq. for the following reasons:

- Significant changes to the *Code of Virginia* were mandated by the 1998 General Assembly.
- An emergency regulation, Regulation for Criminal Record and Child/Neglect Registry Checks for Child Welfare Agencies, was promulgated to address the *Code* changes. This regulation was effective May 19, 1999 and will cease being effective May 18, 2000.
- The revisions required to amend 22 VAC 40-190-10 et seq. were so extensive it is more efficient to repeal the existing regulation and promulgate a new regulation. Regulation for Criminal Record Checks for Child Welfare Agencies, 22 VAC 40-190-10 et seq. is being repealed.
- The proposed new regulation incorporates organizational changes requested during public comment, content changes requested during public comment, and clarifications.

Substance:

A summary of substantive changes is listed below. Attached is a detailed matrix that cross-references citations from the regulation being repealed to the new proposed regulation. The matrix also identifies citations that are new to the new proposed regulation.

The Minimum Standards for Background Clearances for Child Welfare Agencies, 22 VAC 40-191-10 et seq. incorporates the substantive changes listed below.

A. The following changes that were mandated by the 1998 General Assembly and became effective July 1, 1998.

1. Expanding barrier crimes;
2. Including prior adult convictions and juvenile convictions and adjudications of delinquency as part of the barrier crimes;
3. Mandating child abuse and neglect central registry checks be conducted on required persons;

NOTE: Requiring central registry checks was added to the criminal record sections of the *Code* for child welfare agencies effective July 1, 1998. Requiring central registry reports is new for staff of child-placing agencies. However, many child-placing agencies choose to obtain central registry reports on staff. Central registry reports for staff of religious exempt child day centers is new. However, the majority of facilities addressed in Chapter 191 were required prior to July 1, 1998 to have central registry checks by the regulations that exist for the facility. Below are facilities that have been required prior to July 1, 1998 to have central registry checks.

Facility and regulation

Licensed family day homes
Minimum Standards for Licensed Family Day Homes

Family day homes approved by family day systems
Minimum Standards for Licensed Family Day-Care Systems

Licensed family day systems
Minimum Standards for Licensed Family Day-Care Systems

Voluntarily registered family day homes
Voluntary Registration of Family Day Homes, Requirement for Providers

Foster and adoptive homes approved by child-placing agencies
Minimum Standards for Licensed Child-Placing Agencies

Licensed independent foster homes
Minimum Standards for Licensed Independent Foster Homes

4. Adding a founded complaint of child abuse or neglect as a prohibition to licensure, registration, approval, employment, volunteering, or for certain officers and board members;
 5. Adding a founded complaint of child abuse or neglect as a prohibition to operating or residing in a family day home;
 6. Requiring that if an applicant is denied approval or employment due to a founded complaint of child abuse or neglect that the person be given a copy of the report;
 7. Expanding of prohibitions to be included in a sworn disclosure statement;
 8. Including that religious exempt child day centers should be included in the regulation; and
 9. Establishing a waiver request for being disqualified due a child abuse or neglect founded complaint or felony conviction within the last five years with the restriction that certain convictions can not be waived.
- B. The Child Day-Care Council approved the below items for the Minimum Standards for Background Clearances for Licensed Child Day Centers, 22 VAC 15-051-10 et seq. These items have been incorporated into the regulation for child welfare agencies.
1. Have a separate regulation for licensed child day centers.
 2. Change the regulation name to **Background Clearances**. This makes referencing the regulation easier and more readable.
 3. Where possible, reorganize the document so the sworn disclosure statement, criminal record report, and Child Abuse and Neglect Central Registry report do not duplicate the same statements and make the document longer.
 4. Add definitions for barrier crimes, central registry report, child abuse/neglect history record request, child abuse and neglect registry, child welfare agency, commissioner, contract agency, contract employee, department, disqualifying background, involved in day-to-day operations, and licensed.

5. Modify definition for applicant for licensure, barrier crimes, central criminal records exchange and sworn disclosure statement and remove definition for officer of the board.
6. Clarify which employees, contract employees and officers and board members are affected by background clearances. This has been done through the definitions of an employee, contract employee, officer of the board and involved in the day-to-day operations of the facility. Employees, contract employees and board members that are affected by background clearances are ones that are (i) alone with, in control of or supervising one or more children or (ii) involved in the day to day operations of a facility.

“Involved in the day-to-day operations of the center” means being:
(i) in a supervisory or management position, making daily decisions regarding the operation of the facility or (ii) counted by the facility for purposes of staff-to-children ratios.
7. Include contract employees for background clearances when the agreement is with the parent but the service is being delivered to the child at the facility. Also clarify that contract employees affected by background clearances are those contract employees that provide services to a child or children. A definition of contract employee has been added to the definitions.
8. The center shall not be penalized if the center has submitted the criminal history record request and child abuse/neglect history record request within seven days of the persons being employed or volunteering.
9. For contract employees and substitute staff from temporary agencies allow for the background clearances to be viewed, verified, and copies maintained.
10. For contract employees and substitute staff from temporary agencies allow a background clearance to be accepted if it is not dated more than 12 months prior to the date of when the contractor begins providing services at the facility.
11. If the Department becomes aware that a person has a disqualifying background; the department shall be permitted to release this information to the facilities that have a legitimate interest.
12. Require a copy, not an original, of the central registry report. Only a copy is required by *Code* and provides the same flexibility as the copy of a criminal record report.
13. Change wording on verifying of background clearances to be “the facility designee shall be charged with knowledge of all information in the clearance.”

14. If an individual leaves the facility and the criminal record report is 90 days old or less, allow the individual to take the original. The center is to keep a copy, with a statement that it is a photocopy of an original that the facility verified. The regulation should still require that the original criminal record report be obtained and filed at the location of the facility where the person is currently working or volunteering.
15. Allow a criminal record report and a central registry check to remain valid as long as the period of separation does not exceed 12 consecutive months. Facilities would not incur the cost of new checks for employees used in the summer such as college students. This would aid centers such as Parks and Recreation and summer programs that employ students for the summer. This would be a cost-effective change.
16. Allow copies of the criminal record report to be maintained at non-primary place of work. If a person works at multiple facilities, he will no have to obtain multiple original criminal record reports. The copy of the criminal record report must carry statement that the center designee has viewed and verified the original.
17. Not require the sworn disclosure statement to be attached to the criminal record report and central registry report. Add same retention requirements as the criminal record report and central registry report. Including the Sworn disclosure statement as a background clearance accomplished this.

C. The below department recommendations:

1. Clarify terms by adding definitions for applicant for approval, approved, child welfare agency, department representative, good character and reputation, other person or persons officially involved in the operations of religious exempt center, registered, religious exempt center, and sex offense felony for family day home and modifying definition of facility.
2. Comply with Requirements for Providers for Voluntarily Registered Family Day Homes that require background clearances for provider assistants. Provider assistant in a family day home was added to the definition of employee in 22 VAC 40-191-10.
3. Reference that Licensed Child Day Care Systems requirements are in 22 VAC 15-051-10 et seq.
4. Comply with § 63.1-198.1 for the *Code of Virginia* that states that the provision of this section of the *Code* shall apply only to volunteers who will be alone with any child in the performance of their duties. The volunteer definition in 22 VAC 40-191-10 has been written to state this.

5. Provide a list of persons affected by background clearances.
6. Provide a list of facilities subject to background clearances.
7. Maintain the safety of children in care by requiring adults, age 18 years and older, who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency to obtain background clearances.
8. Comply with Minimum Standards for Licensed Family Day Homes that require persons age 14 years and older to have central registry checks. This regulation was expanded to include the other types of family day homes, voluntarily registered family day homes and family day homes approved by family day systems. This change complies with § 63.1-198.3 of the *Code of Virginia*. This section states it shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides in the home, has been convicted of specified sex offense felonies or is the subject of a founded complaint of child abuse or neglect.
9. Comply with § 63.1-198, which requires background clearances prior to a person assuming board duties. In the repealed regulation, this had been 21 days.
10. Inform the person that a background clearance is being done. The Child Day-Care Council approved this for the Minimum Standards for Background Clearances for Licensed Child Day Centers.
11. Expand the acceptance of background clearances that are not dated more than 90 days to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center.

Issues:

Attached are matrix charts, which list the advantages and disadvantages of proposed regulation.

Alternatives:

The department considered the following alternatives to the proposed chapter.

- Promulgate no regulation and at the end of the emergency regulation facilities would revert to Chapter 190, Regulation for Criminal Record Checks for Child Welfare Agencies.

Significant changes to the *Code of Virginia* were mandated by the 1998 General Assembly and Chapter 190 would not address the mandates.

- Promulgate the emergency regulation as the proposed regulation.

Public comment suggested organizational, content, and clarification changes. Several questions from providers and state staff indicated where clarifications were needed.

- Amend Chapter 190, Regulation for Criminal Record Checks for Child Welfare Agencies.

The revisions required to amend 22 VAC 40-190-10 et seq. were so extensive it is more efficient to repeal the existing regulation and promulgate a new regulation. Regulation for Criminal Record Checks for Child Welfare Agencies, 22 VAC 40-190-10 et seq. is being repealed.

Public Comment:

- A. The recommendations received from the Child-Day Care Council committee were incorporated.
- B. Representatives from religious exempt child day centers expressed concern that criminal record reports and central registry reports must be obtained prior to persons beginning employment or volunteering. Other facilities are allowed 21 day to obtain these clearances. With the difficulty of finding staff and delays in obtaining clearance reports, the religious exempt facilities expressed that they may not be able maintain required staff levels when a new employee or volunteer is needed.

Agency Response: The §63.1-198.2 of the *Code of Virginia* requires that for prospective employees or volunteers or other persons officially involved in the day-today operations are to first obtain criminal record and central registry checks.

Clarity of the Regulation:

Regulatory staff at central and regional levels and two day care providers reviewed the proposed regulation. Comments indicated that the flow is improved and easier to follow. The use of charts provides a quick and easy reference. The Child Day Care Council has approved the Minimum Standards for Background Clearances for Licensed Child Day Centers, which is formatted similar to this regulation. A more detail review of the proposed regulation will be done during the sixty-day public comment period.

Periodic Review:

No later than three years after the proposed regulation becomes effective, the agency will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated, and the specific and measurable goals the proposed regulation is intended to achieve.

Fiscal Impacts:

The regulation provides for clearances required by *Code*. Regulation changes have minimized a facility or person having to obtain duplicate clearances.

The fees collected offset the cost to State Police of processing criminal record clearances. The fees collected offset the cost to the Department of Social Services for processing central registry reports.

Local departments of social services are not affected by this regulation.

The background clearances are the responsibility of the facility. Licensing inspectors confirm additional background clearances have been obtained as part of the licensing and registration approval process or during inspection visits.

It is the staff at these facilities that are required to have background clearances. Either the facility or the person having the background clearance done would incur the costs. The cost of the State Police criminal record clearance is \$15.00 and the cost of the child abuse and neglect central registry clearance is \$5.00

Although there are approximately 7,569 facilities regulated by this Chapter, the background clearances are not new for most facilities.

Listed below are changes that have fiscal impact. The fiscal impacts show the number of facilities affected and the costs per person. There are no figures available on the number of persons impacted.

- **CHANGE:** Require child abuse and neglect central registry clearance at initial application for licensure, registration, approval, and exemption.

The child abuse and neglect central registry report, as a background clearance, is required at initial application for licensure, registration, approval, or exemption.

This is to comply with 1998 Code changes mandating child abuse and neglect central registry reports. The majority of facilities have been obtaining central registry clearances prior to July 1, 1998, as the facility regulation required this. Central registry clearances became a requirement for licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date, some child-placing agencies chose to obtain central registry clearances.

Fiscal impact: It is estimated that annually there are three new licensed child-placing agencies and 37 new religious exempt centers. Cost per person is \$5.00.

- **CHANGE:** Require child abuse and neglect central registry clearance when a facility hires an employee or has a volunteer begin service.

This is to comply with 1998 Code changes mandating child abuse and neglect central registry reports. The majority of facilities have been obtaining central registry clearances prior to July 1, 1998, as the facility regulation required this. Requiring central registry clearances became a new requirement to licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date, some child-placing agencies chose to obtain central registry clearances.

Fiscal impact: There are approximately 62 licensed child-placing agencies and 816 religious exempt centers. There is no estimate on the number of new employees or volunteers that begin work annually with these facilities. The facilities have been required to obtain the clearances since July 1, 1998. Cost per person is \$5.00.

- **CHANGE:** Background clearances for adults residing in homes

Require background clearances for adults, age 18 years and older who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency.

Providers will incur a new cost of obtaining criminal record reports and child abuse and neglect registry reports for persons that reside in their home that are age 18 years or older.

Fiscal impact: There are approximately 3100 foster and adoptive homes and 4 licensed independent foster homes. There are no statistics on the annual number of approvals of foster and adoptive homes approved by licensed child placing agencies. Approval and licensure are the main point at which the cost of clearances would be incurred. Background clearances are required (i) at initial licensure or approval of a facility, (ii) when a person age 18 or over begins residing in the home, or (iii) a person residing in the home turns age 18. The cost for both clearances is \$20.00.

- **CHANGE:** Require child abuse and neglect central registry clearance for persons age 14 years and older residing in a licensed, registered, and approved family day homes.

Added requiring child abuse and neglect central registry clearances reports for persons age 14 years and older who reside in a licensed family day home. This was done to be consistent with Minimum Standards for Licensed Family Day Homes that already require the central registry clearance. This regulation was expanded to include the other types of family day homes, which are the voluntarily registered family day homes and family day homes approved by licensed systems.

Fiscal impact: There is no fiscal impact for licensed family day homes as these homes have been obtaining the clearance. There are 1033 voluntarily registered homes and 625 family day homes approved by licensed systems. Voluntarily registered homes must obtain background clearances, including the child abuse and neglect central registry clearance, every two years at their renewal application. Family day homes approved by licensed family day systems will have to obtain the central registry clearance mainly at the point of approval. Additional clearances will be required (i) when a person age 14 or over begins residing in the home or (ii) a person residing in the home becomes age 14. The cost per person is \$5.00.

- **CHANGE:** There are several changes that will slightly reduce the number or background clearances. These are:
 - Defining which employees, contract employee, officer and board members are required to have background clearances. This was done through adding the qualifiers of (i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.
 - Specifying that volunteers affected by background clearances are volunteers who are alone with children.

- For contract employees and substitute staff from temporary agencies allow the background clearances to be viewed, verified, and copies maintained. Also allow a background clearance to be accepted if it is not dated more than 12 months prior to the date of when the contractor begins providing services at the facility.
- Expand acceptance of background clearances that are not dated more than 90 days to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center.
- Allow a person that leaves a facility to take the criminal record report or central registry with him, if the report is dated no more than 90 days.
- Change the period for a leave of absence to be increased from 6 months to 12 months before new background clearances are needed. Expanded absence to include termination of employment.

Fiscal impact: There are no estimates available on how many people these changes will impact.

ASSESSMENT OF REGULATION ON THE INSTITUTION OF THE FAMILY AND FAMILY STABILITY

VAC Number: 22 VAC 40-190-10 et seq.
Regulation Title: Criminal Record Checks for Welfare Agencies

Strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children.

There is minimal impact on the authority and rights of parents in the education, nurturing, and supervision of their children.

If the children are cared for by a child welfare agency that is licensed, approved, registered or is religious exempt center, the children will be supervised and managed by staff that are required to have criminal record and child abuse and neglect clearances. However, the clearance for expanded barrier crimes and child abuse and neglect founded complaints only applies to persons hired, volunteering, licensed, approved, registered or granted religious exemption after July 1, 1998.

Encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents.

The regulation does not impact the above.

3. Strengthen or erode the marital commitment.

The regulation does not impact the above.

Increase or decrease disposable family income.

The impact to the disposable family income for most families will be non-existent or minimal. The facility or person pays for the cost of background clearances. It is unlikely that facilities will increase fees as most facilities have already been obtaining the child abuse and neglect central registry checks. Requiring central registry clearances became a new requirement to licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date some child-placing agencies by choice already obtained central registry clearances.

There will be some impact on the income of a person who operates a family day home. These are detailed below:

SPECIFICS ON FAMILY DAY HOME PROVIDER IMPACT:

CHANGE: Background clearances for adults residing in homes

Require background clearances for adults, age 18 years and older who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency.

Providers will incur a new cost of obtaining criminal record reports and child abuse and neglect registry reports for persons that reside in their home that are age 18 years or older.

Fiscal impact: There are approximately 3100 foster and adoptive homes and 4 licensed independent foster homes. There are no statistics on the annual number of approvals of foster and adoptive homes approved by licensed child placing agencies. Approval and licensure are the main point at which the cost of clearances would be incurred. Background clearance are required (i) at initial licensure or approval of a facility, (ii) when a person age 18 or over begins residing in the home, or (iii) a person residing in the home turns age 18. The cost for both clearances is \$20.00.

CHANGE: *Require child abuse and neglect central registry clearance for persons age 14 years and older residing in a licensed, registered, and approved family day homes.*

Added requiring child abuse and neglect central registry clearances reports for persons age 14 years and older who reside in a licensed family day home. This was done to be consistent with Minimum Standards for Licensed Family Day Homes that already require the central registry clearance. This regulation was expanded to include the other types of family day homes, which are the voluntarily registered family day homes and family day homes approved by licensed systems.

Fiscal impact: There is no fiscal impact for licensed family day homes as these homes have been obtaining the clearance. There are 1033 voluntarily registered homes and 625 family day homes approved by licensed systems. Voluntarily registered homes must obtain background clearances, including the child abuse and neglect central registry clearance, every two years at their renewal application. Family day homes approved by licensed family day systems will have to obtain the central registry clearance mainly at the point of approval. Additional clearances will be required (i) when a person age 14 or over begins residing in the home or (ii) a person residing in the home becomes age 14. The cost per person is \$5.00.

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.

Summary: The regulation establishes background clearances for criminal convictions and founded complaints of child abuse and neglect for child welfare agencies. It prohibits the licensing, approval, registration, and exemption of facilities when designated persons associated with the facility have certain criminal convictions or have ever been the subject of a founded complaint of child abuse or neglect. Facilities are prohibited from using a person for certain roles if the person has certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect.

Licensed child day centers and licensed child day center systems are not included in this regulation.

The Regulation for Criminal Record Checks for Child Welfare Agencies, 22 VAC 40-190-10 et seq. is being repealed. The revisions required to amend 22 VAC 40-190-10 et seq. were so extensive that it is more efficient to repeal the existing regulation and promulgate a new regulation. The proposed new regulation incorporates significant *Code of Virginia* changes mandated by the 1998 General Assembly amendments, organizational changes requested during public comment, content changes requested during public comment, and clarifications.

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
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Statutory Authority: §§ 63.1-198 through 63.1-199 of the *Code of Virginia*

Basis: The State Board of Social Services has the statutory authority to promulgate this regulation based on *Code of Virginia* sections 63.1-25. The State Board is authorized to regulate the following §§ 63.1-198; 63.1-198.1; 63.1-198.2; 63.1-198.3; 63.1-198.4 and 63.1-199 of the *Code of Virginia*. These *Code* sections establish background clearances for criminal convictions and founded complaints of child abuse or neglect and set prohibitions if a person is found to have certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect.

Section 63.1-198 applies to applicants for licensure and registration. Section 63.1-199 applies to denying or approving applicants. Section 63.1-198.1 applies to employees and volunteers of child welfare agencies. It also applies to caretakers approved by family day care, all adults living in the family day home, and those individuals approved by child-placing agencies as foster or adoptive parents. Section 63.1-198.2 applies to persons employed by, volunteering for, or who are officially involved in the day-to-day operations of a religious exempt center. Section 63.1-198.3 applies to persons who reside in a family day home.

Section 63.1-198.4 establishes a waiver for any person who seeks to operate, volunteer or work at a child welfare agency who is disqualified because of a conviction in his criminal record review. The waiver can not be granted for certain barrier crimes.

Purpose: The *Code of Virginia* mandates background clearances for criminal convictions and founded complaints of child abuse or neglect for child welfare agencies. The *Code* prohibits operating, volunteering, or working at a child welfare agency for persons who have certain convictions or a founded complaint of abuse or neglect. This is to protect children who are in the care of child welfare agencies. Persons with convictions involving crimes against minors, violence and sex offenses, or with a founded complaint of child abuse or neglect may endanger and harm children.

The agency has decided to promulgate a new regulation titled Minimum Standards for Background Clearances for Child Welfare Agencies, 22 VAC 40-191-10 et seq. for the following reasons:

- Significant changes to the *Code of Virginia* were mandated by the 1998 General Assembly.
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- The revisions required to amend 22 VAC 40-190-10 et seq. were so extensive it is more efficient to repeal the existing regulation and promulgate a new regulation. Regulation for Criminal Record Checks for Child Welfare Agencies, 22 VAC 40-190-10 et seq. is being repealed.
- The proposed new regulation incorporates organizational changes requested during public comment, content changes requested during public comment, and clarifications.

Substance: A summary of the substantive changes follow:

The Minimum Standards for Background Clearances for Child Welfare Agencies, 22 VAC 40-191-10 et seq. incorporates the substantive changes listed below.

B. The following changes that were mandated by the 1998 General Assembly and became effective July 1, 1998.

1. Expanding barrier crimes;
2. Including prior adult convictions and juvenile convictions and adjudications of delinquency as part of the barrier crimes;
3. Mandating child abuse and neglect central registry checks be conducted on required persons;

NOTE: Requiring central registry checks was added to the criminal record sections of the *Code* for child welfare agencies effective July 1, 1998. Requiring central registry reports is new for staff of child-placing agencies. However, many child-placing agencies choose to obtain central registry reports on staff. Central registry reports for staff of religious exempt child day centers is new. However, the majority of facilities addressed in Chapter 191 were required prior to July 1, 1998 to have central registry checks by the regulations that exist for the facility. Below are facilities that have been required prior to July 1, 1998 to have central registry checks.

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Minimum Standards for Licensed Family Day-Care Systems

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.

Licensed family day systems
Minimum Standards for Licensed Family Day-Care Systems

Voluntarily registered family day homes
Voluntary Registration of Family Day Homes, Requirement for Providers

Foster and adoptive homes approved by child-placing agencies
Minimum Standards for Licensed Child-Placing Agencies

Licensed independent foster homes
Minimum Standards for Licensed Independent Foster Homes

4. Adding a founded complaint of child abuse or neglect as a prohibition to licensure, registration, approval, employment, volunteering, or for certain officers and board members;
 5. Adding a founded complaint of child abuse or neglect as a prohibition to operating or residing in a family day home;
 6. Requiring that if an applicant is denied approval or employment due to a founded complaint of child abuse or neglect that the person be given a copy of the report;
 7. Expanding of prohibitions to be included in a sworn disclosure statement;
 8. Including that religious exempt child day centers should be included in the regulation; and
 9. Establishing a waiver request for being disqualified due a child abuse or neglect founded complaint or felony conviction within the last five years with the restriction that certain convictions can not be waived.
- C. The Child Day-Care Council approved the below items for the Minimum Standards for Background Clearances for Licensed Child Day Centers, 22 VAC 15-051-10 et seq. These items have been incorporated into the regulation for child welfare agencies.
1. Have a separate regulation for licensed child day centers.
 2. Change the regulation name to **Background Clearances**. This makes referencing the regulation easier and more readable.
 3. Where possible, reorganize the document so the sworn disclosure statement, criminal record report, and Child Abuse and Neglect Central

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
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Registry report do not duplicate the same statements and make the document longer.

4. Add definitions for barrier crimes, central registry report, child abuse/neglect history record request, child abuse and neglect registry, child welfare agency, commissioner, contract agency, contract employee, department, disqualifying background, involved in day-to-day operations, and licensed.
5. Modify definition for applicant for licensure, barrier crimes, central criminal records exchange and sworn disclosure statement and remove definition for officer of the board.
6. Clarify which employees, contract employees and officers and board members are affected by background clearances. This has been done through the definitions of an employee, contract employee, officer of the board and involved in the day-to-day operations of the facility. Employees, contract employees and board members that are affected by background clearances are ones that are (i) alone with, in control of or supervising one or more children or (ii) involved in the day to day operations of a facility.

“Involved in the day-to-day operations of the center” means being:

(i) in a supervisory or management position, making daily decisions regarding the operation of the facility or (ii) counted by the facility for purposes of staff-to-children ratios.

7. Include contract employees for background clearances when the agreement is with the parent but the service is being delivered to the child at the facility. Also clarify that contract employees affected by background clearances are those contract employees that provide services to a child or children. A definition of contract employee has been added to the definitions.
8. The center shall not be penalized if the center has submitted the criminal history record request and child abuse/neglect history record request within seven days of persons being employed or volunteering.
9. For contract employees and substitute staff from temporary agencies allow for the background clearances to be viewed, verified, and copies maintained.
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Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.

months prior to the date of when the contractor begins providing services at the facility.

11. If the Department becomes aware that a person has a disqualifying background; the department shall be permitted to release this information to the facilities that have a legitimate interest.
12. Require a copy, not an original, of the central registry report. Only a copy is required by Code and provides the same flexibility as the copy of a criminal record report.
13. Change wording on verifying of background clearances to be “the facility designee shall be charged with knowledge of all information in the clearance.”
14. If an individual leaves the facility and the criminal record report is 90 days old or less, allow the individual to take the original. The center is to keep a copy, with a statement that it is a photocopy of an original that the facility verified. The regulation should still require that the original criminal record report be obtained and filed at the location of the facility where the person is currently working or volunteering.
15. Allow a criminal record report and a central registry check to remain valid as long as the period of separation does not exceed 12 consecutive months. Facilities would not incur the cost of new checks for employees used in the summer such as college students. This would aid centers such as Parks and Recreation and summer programs that employ students for the summer. This would be a cost-effective change.
16. Allow copies of the criminal record report to be maintained at a non-primary place of work. If a person works at multiple facilities, he will not have to obtain multiple original criminal record reports. The copy of the criminal record report must carry statement that the center designee has viewed and verified the original.
17. Not require the sworn disclosure statement to be attached to the criminal record report and central registry report. Add same retention requirements as the criminal record report and central registry report. Including the Sworn disclosure statement as a background clearance accomplished this.

D. The below department recommendations:

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.

1. Clarify terms by adding definitions for applicant for approval, approved, child welfare agency, department representative, good character and reputation, other person or persons officially involved in the operations of religious exempt center, registered, religious exempt center, and sex offense felony for family day home and modifying definition of facility.
2. Comply with Requirements for Providers for Voluntarily Registered Family Day Homes that require background clearances for provider assistants. Provider assistant in a family day home was added to the definition of employee in 22 VAC 40-191-10.
3. Reference that Licensed Child Day Care Systems requirements are in 22 VAC 15-051-10 et seq.
4. Comply with § 63.1-198.1 for the *Code of Virginia* that states that the provision of this section of the *Code* shall apply only to volunteers who will be alone with any child in the performance of their duties. The volunteer definition in 22 VAC 40-191-10 has been written to state this.
5. Provide a list of persons affected by background clearances.
6. Provide a list of facilities subject to background clearances.
7. Maintain the safety of children in care by requiring adults, age 18 years and older, who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency to obtain background clearances.
8. Comply with Minimum Standards for Licensed Family Day Homes that require persons age 14 years and older to have central registry checks. This regulation was expanded to include the other types of family day homes, voluntarily registered family day homes and family day homes approved by family day systems. This change complies with § 63.1-198.3 of the *Code of Virginia*. This section states it shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides in the home, has been convicted of specified sex offense felonies or is the subject of a founded complaint of child abuse or neglect.
9. Comply with § 63.1-198, which requires background clearances prior to a person assuming board duties. In the repealed regulation, this had been 21 days.

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.

10. Inform the person that a background clearance is being done. The Child Day-Care Council approved this for the Minimum Standards for Background Clearances for Licensed Child Day Centers.
11. Expand the acceptance of background clearances that are not dated more than 90 days to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center.

**Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.**

Issues:

General Issues

Issue 1: Title has changed

The title of repealed Chapter 190 was Regulation for Criminal Record Checks for Child Welfare Agencies. The Chapter 191 is titled Minimum Standards for Background Clearances for Child Welfare Agencies. The Code has been revised to include Child Abuse/Neglect Registry checks. To expand the title to Regulation for Criminal Record and Child Abuse/Neglect Registry Checks for Child Welfare Agencies would be too cumbersome. Minimum Standards was added to the title so the public would know that these are minimum requirements.

Advantages and Disadvantages: The title is shorter when referring to the regulation. Providers will know that these are minimum requirements. The Child Day-Care Council supports the change for centers. Disadvantage is facilities and state staff affected by this regulation will have to adjust to a new name.

Issue 2: Flow of document has changed

The flow of document has changed. Repealed Chapter 190 was by type of report required. Chapter 191 outlines background clearance by provider flow.

Advantages and Disadvantages: Organizing the Chapter by background clearance report would have created duplication of wording, as most requirements are the same for the three background clearances. The Child-Day Care Council committee recommended that the Chapter be reorganized so the sworn disclosure statement, criminal record, and central registry do not duplicate the same statements. Persons who have reviewed the Chapter prefer the new flow. Disadvantage is that persons who use the Chapter will have to adjust to a new flow.

| Repealed Chapter 190 | | Propose Chapter 191 | |
|----------------------|--------------------------------|---------------------|---|
| Part I | Definitions | Part I | Introduction (includes definitions) |
| Part II | The Sworn Disclosure Statement | Part II | Persons Affected by Background Clearances |
| Part III | The Criminal Record Report | Part III | Background Clearances at Initial Application |
| - | General Requirements | Part IV | Background Clearances After Licensure, Registration or Approval |

**Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.**

- | | | |
|----------------------------------|-----------|--|
| - Validity of Report | Part V | Consequences Associated With Background Clearances |
| - Maintenance of Report | Part VI | Background Clearances for Religious Exempt Child Day Centers |
| - Requirements for Board Members | Part VII | Verifying Background Clearances |
| | Part VIII | Duration of Background Clearances |
| | Part IX | Maintenance of Background Clearances |
| | Part X | The Waiver |

Part I, 22 VAC 40-191-10 Definitions.

Issue 3: The following definitions have been added: applicant for approval, approved, child welfare agency, central registry report, child abuse/neglect history record request, child abuse and neglect registry, child welfare agency, commissioner, contract agency, contract employee, department, department representative, disqualifying background, involved in day-to-day operations, licensed, good character and reputation, other person or persons officially involved in the operations of religious exempt center, registered, religious exempt center, and sex offense felony for family day home.

Advantages and Disadvantages: These terms are used in the regulation. The definitions provide references for the reader. The reader will need to refer to the definitions when reviewing the regulation.

Issue 4: Modified definitions for applicant for licensure or registration, barrier crimes, central criminal record exchange, facility, and sworn disclosure statement.

Advantages and Disadvantages: These terms were modified either to incorporate Code changes or to clarify the definition. There should be no disadvantage as no information has been removed.

Issue 5: The definition of employee has three significant changes

The definition of employee has three significant changes. These are (1) changing the employees affected, (2) separating out and changing the contract employee, and (3)

**Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.**

adding provider assistant in a family day home as an employee. Below is information on each of these changes.

1. Changing the employees affected

Explanation of Change

In Chapter 190, “employee” means all personnel hired at a facility regardless of role, service, age, function, or duration of employment at the facility.”

In Chapter 191, employee means a person hired by a facility. A qualifier is used in the Chapter 191 stating that background clearances only apply to employees who are:

(i) Alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.

“Involved in the day to day operations of a facility” means being:

1. in a supervisory or management position which makes daily decisions regarding the operation of the facility
2. counted by the facility for purposes of staff-to-children ratios;
3. a person who provides casework services for a child placing agency; or
4. a home visitor employed by a licensed family day system.

See

22 VAC 40-191-40 A 4 a

22 VAC 40-191-50 B

22 VAC 40-191-60 B 1

Below are examples of the type of employees that would no longer be required to have clearances unless they meet the criteria of (i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.

- . A janitor or cook that works at a facility;
- . A person employed for a specialty service such as providing music lessons;
- . A secretary at a licensed child-placing agency;

**Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.**

- . An account clerk working for a licensed family day system.

Advantage

Clarifies which employees are affected by background clearances. Reduces confusion and questions from providers and state licensing inspectors on which employees require background clearances. Eliminates the cost of \$20.00 per individual to providers of obtaining background clearances on certain limited number of employees.

Disadvantage

Not every person that is hired by a facility will be required to have background clearance.

2. Separating and changing the contract employee definition

Explanation of Change

Contract employees have been taken out of the definition of employee. Three changes have occurred to the substantive definition of contract employee. These are:

- a. In chapter 191 , contract employees has been given the same qualifier as employees:
 - (i) Alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.
- See
22 VAC 40-191-40 A 4 b
22 VAC 40-191-50 B
22 VAC 40-191-60 B 2
- b. The scope of the contract employee has been narrowed to contract employees that provide services to a child or children.
- c. The scope has been broadened to include a person or person working for contract agency with which the parent has an agreement to provide services to a child or children at the facility.

Advantage

- a. *Clarifies which contract employees are affected by background clearances. Reduce confusion and questions from providers and state licensing inspectors on which employees require background clearances.*

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.

- b. Eliminates the \$20.00 background clearance expense per individual to providers for contract staff who are not providing services to a child or children. This would eliminate requiring background clearances on a contract staff such as an electrician, gardener, or secretary or any staff that would not be working with the children.*
- c. A parent sometimes will make an agreement for a person to come to the facility and provide a service such as speech therapy, gymnastics, and music to his child. This allows for a facility to require a background clearance for this person if the person will be alone with, in control of, or supervising one or more children while at the facility. This assures clearances have been done on a person alone with a child or children.*

Disadvantage

Of a and b not every person that is hired by a facility will be required to have background clearance.

Of c requires additional background clearance, and the facility or person having the background clearance would incur the cost.

- 3. Adding to the definition of an employee, a provider assistant in a family day home

Explanation of Change

Provider assistant in a family day home was added to the definition of employee.

Advantage

For Chapter 191, to be consistent with Requirements for Providers for Voluntarily Registered Family Day Homes that require background clearances for provider assistants.

Disadvantage

None, this requirement already exists.

Issue 6: Officer of the board definition

This definition is no longer in Chapter 191. Chapter 191 uses officer and board members with the qualifier (i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility or officers and board members. See 22 VAC 40-191-40 A 4, 22 VAC 40-191-50 B and 22 VAC 40-191-60 B 3.

**Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.**

Advantages and Disadvantages: Clarifies the conditions under which a board member shall have background clearances. Clarifies that background clearances are required if an officer is directly involved in the day to day operations of a facility. There are no disadvantages.

Issue 7: Volunteer definition

In Chapter 191, a volunteer is a person who provides services without pay and who is alone with children in performance of his duties. In the repealed Chapter 190, it was a volunteer alone with, in control of, or supervising one or more children outside the presence of paid facility staff.

Advantages and Disadvantages: Complies with § 63.1-198.1 of the Code of Virginia that states that the provision of this section of the Code shall apply only to volunteers who will be alone with any child in the performance of their duties. There are no disadvantages.

22 VAC 40-191-20. Licensed child day center systems.

Issue 8: Added licensed child day center systems

The Child Day-Care Council and the State Board promulgate the regulations for systems. This references that the licensed child day center systems are set forth in 22 VAC 15-051-10 et seq. Currently no licensed child day center systems exist.

Advantages and Disadvantages: Explains where to find regulations for licensed child day center systems and does not duplicate information. No disadvantages identified.

22 VAC 40-191-30. Barrier crimes specified.

Issue 9: Expansion of barrier crimes was so extensive and it was clearer to list the crimes in a separate section

Advantages and Disadvantages: Provides a list of barrier crime and complies with the expansion of convictions mandated by the 1998 Code changes.

PART II 22 VAC 40-191-40. Persons affected by background clearances.

Issue 10: Background Clearances for adults residing in homes

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.

Require background clearances for adults, age 18 years and older who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency. See 22 VAC 40-191-40 A 6, 22 VAC 40-191-50 B and 22 VAC 40-191-60 D.

Advantages and Disadvantages: Maintaining the safety of children. The disadvantage is providers will incur a new cost of obtaining criminal record reports and central registry reports for persons that reside in their homes that are age 18 years or older. The cost is \$15.00 for a criminal record report and \$5.00 for a central registry report per person.

Issue 11: Background clearances persons 14 years and older residing in a licensed family day home

Added requiring central registry checks for persons age 14 years and older who reside in a licensed family day home. See 22 VAC 40-191-40 B, 22 VAC 40-191-50 B and 22 VAC 40-191-60 E. This regulation was expanded to include the other types of family day homes, voluntarily registered family day homes, and family day homes approved by licensed systems.

Advantages and Disadvantages: Complies with Minimum Standards for Licensed Family Day Homes that require persons age 14 years and older to have central registry checks. Creates consistency for all regulated family day homes by requiring the same requirement for voluntarily registered family day homes and family day homes approved by licensed family day systems. There is no fiscal impact for licensed family day homes as these homes have been obtaining the clearance. Voluntarily registered homes must obtain background clearances, including the child abuse and neglect central registry clearance, every two years at their renewal application. Family day homes approved by licensed family day systems will have to obtain the central registry clearance mainly at the point of approval. Additional clearances will be required (i) when a person age 14 or over begins residing in the home or (ii) a person residing in the home becomes age 14. The cost per person is \$5.00.

PART III 22 VAC 40-191-50. Background clearances at initial application for licensure, registration or approval.

Issue 12: 22 VAC 40-191-50 A Lists facilities affected.

Advantages and Disadvantages: The list easily identifies if a facility is affected by this regulation. It is a duplicate of what is in the definition of facility.

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.

Issue 13: Require central registry report

Require central registry report, as a background clearance required at initial application for licensure, registration or approval. See 22 VAC 40-191-60B 3.

Advantages and Disadvantages: Complying with 1998 Code changes mandating child abuse and neglect central registry reports. Disadvantage will be the cost of \$5.00 per person to the facility or to the person obtaining the clearance. The majority of facilities have been obtaining central registry checks prior to July 1, 1998, as the facility regulation required this. Requiring central registry checks became a new cost to licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Some child-placing agencies by choice already obtain central registry clearances.

Issue 14: Added that the facility or department shall inform the person that background clearances are being done. See 22 VAC 40-191-50 C.

Advantages and Disadvantages: Person being screened will know that a criminal record check is being done. The person may not know that a criminal history has been requested, as the person is not required to sign the request form. No disadvantages known.

Issue 15: Added that the facility shall not be penalized if the center has submitted the criminal history request report and child abuse/neglect history request within seven days of person's being employed or volunteering. See 22 VAC 40-191-50 D.

Advantages and Disadvantages: Preventing facilities from being penalized if they have requested clearances. Background clearances are not always being processed by the state within 21 days.

Issue 16: Added applicant for family day homes shall state on the sworn disclosure if he has been convicted of a sex offense felony or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth or if he knows that any other person, regardless of age, who resides in the house has been convicted of a sex offense felony or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. See 22 VAC 40-191-50 F.

Advantages and Disadvantages: Providing additional protection for children through a statement from family home providers that they are in compliance with § 63.1-198.3. None as there is no cost and the provider must already complete the statement. This will just be an additional question on the statement.

**Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.**

PART IV. 22 VAC 40-191-60. Background clearances after initial application for licensure, registration or approval.

Issue 17: Changed when officers and board members are required to obtain clearances. Changed from 21 days to obtain the criminal record report when the board member assumes the position to prior to assuming position. See 22 VAC 40-191-60 B.

Advantages and Disadvantages: Complies with § 63.1-198, which requires background clearances prior to a person's assuming board duties.

Issue 18: For contract employees and substitute staff from temporary agencies allow for the background clearances to be viewed, verified, and copies maintained. Also allow a background clearance to be accepted if it is not dated more than 12 months prior to the date of when the contractor begins providing services at the facility. See 22 VAC 40-191-60 C.

Advantages and Disadvantages: A facility or individual will not having to incur costs of obtaining additional clearances. The facility verifying the clearances rather than the agency assures the facility has seen that there is no disqualifying background on the reports. If a person is a sole contractor, it is critical that a person other than the contractor is verifying the clearances.

Allows a contractor to serve more facilities without incurring additional background clearance costs. If a contractor serves multiple facilities, then each time he begins serving a new facility within a year of obtaining background clearances, he is not required to obtain new clearances. A contractor serving multiple facilities usually occurs when a contractor provides a specialty service such a gym classes, computer classes, music lessons, tutoring, etc.

Issue 19: Changed voluntarily registered family day homes shall obtain background clearances prior to each renewal of registration rather than every two years. These clearances shall be included with their application for renewal. See 22 VAC 40-191-60 F.

Advantages and Disadvantages: This is consistent with voluntarily registered family day home regulations. No disadvantage, as this is already in regulations for voluntarily registered family day homes.

Issue 20: If the person or persons designated as the applicant; licensee; approved individual or individuals; or registrant or registrants changes, the facility shall obtain

**Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.**

background clearances on the new designated person or persons. See 22 VAC 40-191-60G.

Advantages and Disadvantages: This above been required by repealed Chapter 190, but it is clearly stated in this regulation.

PART V. 22 VAC 40-191-70. Consequences associated with background clearances.

Issue 21: This section added to specify the consequences of having a disqualifying background. Also added that the facility shall provide a person with information appearing on the background clearance if there is a denial of approval or employment due to a disqualifying background.

Advantages and Disadvantages: Complies with Code §§ 63.1-198 through §63.1-199 of the Code of Virginia.

PART VI, 22 VAC 40-191-80. Background clearances for religious exempt centers.

Issue 22: Required background clearances for religious exempt child day centers

Background clearances are included in Chapter 191 regulation and are required to obtain central registry clearances.

Advantages and Disadvantages: Establishes regulations that comply with § 63.1-198. 2 of the Code of Virginia and establishes consistent regulations for verifying, duration and maintenance of background clearances among all regulated facilities. Disadvantage is July 1, 1998 the center or persons requiring a central registry clearance incur the \$5.00 cost of obtaining the clearance.

PART VII. 22-VAC-191-90. Verifying background clearances.

Issue 23: Expand acceptance of background clearances that are not dated more than 90 days to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center. See 22 VAC 191-90 B and C.

Advantages and Disadvantages: Reducing costs by not requiring a new clearance if one is recent. Facility and department will not know if a disqualifying background occurred within the last 90 days.

**Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.**

Issue 24: Change wording on verifying of background clearances to be “the facility designee shall be charged with knowledge of all information in the clearance.”
See 22 VAC 191-90 E.

Advantages and Disadvantages: Concise wording covering review of background clearances. Regulation does not specify what is to be verified or how to determine that clearance is for the correct person. Facility designee is too broad, which means that a person other than the administrator or management staff could be designated.

PART VIII, 22 VAC 40-191-100. Duration of background clearances.

Issue 25: Allow a person that leaves a facility to take clearances

Allow a person that leaves a facility and the criminal record report or central registry report is 90 days old or less, the person may take the report or reports with him.
See 22 VAC-191-100 A.

Advantages and Disadvantages: This keeps the new facility from having to incur the cost of obtaining a new clearance when a valid one is still available. Disadvantage is the original facility will no longer have an original criminal record report on file but will have a statement that the copy is of a verified original.

Issue 26: Leave of absence period to 12 months

Change the period for a leave of absence to be increased from 6 months to 12 months before new background clearances are needed. Expanded absence to include termination of employment. See 22 VAC 40-191-100 B.

Advantages and Disadvantages: This reduces the cost to facilities of having to get clearances on employees/volunteers that are gone 12 months or less. This would aid centers such as Parks and Recreation and summer programs that employ students for the summer. This would be a cost-effective change. The Child-Day Care Council recommended this. Disadvantage is that the person may have had acquired disqualifying background during the additional six months.

Part IX. 22 VAC 40-191-110. Maintenance of background clearances.

Issue 27: Maintain copy of verified original criminal record report

Allows that if a person works at more than one facility, a facility may keep a copy of the criminal record report with a statement that it has been verified from an original report.
See 22 VAC 40-191-110C.

**Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.**

Advantage and Disadvantage: This eliminates the cost of facilities having to get duplicate criminal record reports and central registry reports when a person is working for more than one facility at the same time. Disadvantage is that one facility will have to maintain a copy of a criminal record report verified from the original instead of an original criminal record report.

Part X. 22 VAC 40-191-120 through 170. The waiver.

Issue 28: Establishes a waiver request when a person is disqualified due to a child abuse or neglect founded complaint or felony conviction within the last five years. There is a restriction that certain convictions can not be waived.

Advantage and Disadvantage: Complies Code of Virginia § 63.1-198.4.

Estimated impacts: The regulation provides for clearances required by Code. Regulation changes have minimized a facility or person having to obtain duplicate clearances.

The fees collected offset the cost to State Police of processing criminal record clearances. The fees collected offset the cost to the Department of Social Services for processing central registry reports.

Local departments of social services are not affected by this regulation.

The background clearances are the responsibility of the facility. Licensing inspectors confirm additional background clearances have been obtained as part of the licensing and registration approval process or during inspection visits.

It is the staff at these facilities that are required to have background clearances. Either the facility or the person having the background clearance done would incur the costs. The cost of the State Police criminal record clearance is \$15.00 and the cost of the child abuse and neglect central registry clearance is \$5.00

Although there are approximately 7,569 facilities regulated by this Chapter, the background clearances are not new for most facilities.

Listed below are changes that have fiscal impact. The fiscal impacts show the number of facilities affected and the costs per person. There are no figures available on the number of persons impacted.

- **CHANGE:** Require child abuse and neglect central registry clearance at initial application for licensure, registration, approval, and exemption.

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.

The child abuse and neglect central registry report, as a background clearance, is required at initial application for licensure, registration, approval, or exemption.

This is to comply with 1998 Code changes mandating child abuse and neglect central registry reports. The majority of facilities have been obtaining central registry clearances prior to July 1, 1998, as the facility regulation required this. Central registry clearances became a requirement for licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date, some child-placing agencies chose to obtain central registry clearances.

Fiscal impact: It is estimated that annually there are three new licensed child-placing agencies and 37 new religious exempt centers. Cost per person is \$5.00.

- **CHANGE:** Require child abuse and neglect central registry clearance when a facility hires an employee or has a volunteer begin service.

This is to comply with 1998 Code changes mandating child abuse and neglect central registry reports. The majority of facilities have been obtaining central registry clearances prior to July 1, 1998, as the facility regulation required this. Requiring central registry clearances became a new requirement to licensed child-placing agencies and religious exempt child day centers effective July 1, 1998. Prior to this date, some child-placing agencies chose to obtain central registry clearances.

Fiscal impact: There are approximately 62 licensed child-placing agencies and 816 religious exempt centers. There is no estimate on the number of new employees or volunteers that begin work annually with these facilities. The facilities have been required to obtain the clearances since July 1, 1998. Cost per person is \$5.00.

- **CHANGE:** Background clearances for adults residing in homes

Require background clearances for adults, age 18 years and older who reside in a (i) licensed independent foster home or (ii) an adoptive or a foster home approved by a licensed child placing agency.

Providers will incur a new cost of obtaining criminal record reports and child abuse and neglect registry reports for persons that reside in their home that are age 18 years or older.

Fiscal impact: There are approximately 3100 foster and adoptive homes and 4 licensed independent foster homes. There are no statistics on the annual number of approvals of foster and adoptive homes approved by licensed child placing

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.

agencies. Approval and licensure are the main point at which the cost of clearances would be incurred. Background clearances are required (i) at initial licensure or approval of a facility, (ii) when a person age 18 or over begins residing in the home, or (iii) a person residing in the home turns age 18. The cost for both clearances is \$20.00.

- **CHANGE:** Require child abuse and neglect central registry clearance for persons age 14 years and older residing in a licensed, registered, and approved family day homes.

Added requiring child abuse and neglect central registry clearances reports for persons age 14 years and older who reside in a licensed family day home. This was done to be consistent with Minimum Standards for Licensed Family Day Homes that already require the central registry clearance. This regulation was expanded to include the other types of family day homes, which are the voluntarily registered family day homes and family day homes approved by licensed systems.

Fiscal impact: There is no fiscal impact for licensed family day homes as these homes have been obtaining the clearance. There are 1033 voluntarily registered homes and 625 family day homes approved by licensed systems. Voluntarily registered homes must obtain background clearances, including the child abuse and neglect central registry clearance, every two years at their renewal application. Family day homes approved by licensed family day systems will have to obtain the central registry clearance mainly at the point of approval. Additional clearances will be required (i) when a person age 14 or over begins residing in the home or (ii) a person residing in the home becomes age 14. The cost per person is \$5.00.

- **CHANGE:** There are several changes that will slightly reduce the number or background clearances. These are:
 - Defining which employees, contract employee, officer and board members are required to have background clearances. This was done through adding the qualifiers of (i) alone with, in control of, or supervising one or more children or (ii) involved in the day to day operations of a facility.
 - Specifying that volunteers affected by background clearances are volunteers who are alone with children.

Department of Social Services
Criminal Record Checks for Child Welfare Agencies
22 VAC 40-190-10 et seq.

- For contract employees and substitute staff from temporary agencies allow the background clearances to be viewed, verified, and copies maintained. Also allow a background clearance to be accepted if it is not dated more than 12 months prior to the date of when the contractor begins providing services at the facility.
- Expand acceptance of background clearances that are not dated more than 90 days to include officers and board members, persons residing in the home, licensees, registrants, and person who signs statement of intent to operate a religious exempt center.
- Allow a person that leaves a facility to take the criminal record report or central registry with him, if the report is dated no more than 90 days.
- Change the period for a leave of absence to be increased from 6 months to 12 months before new background clearances are needed. Expanded absence to include termination of employment.

Fiscal impact: There are no estimates available on how many people these changes will impact.